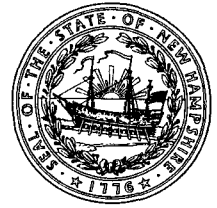




State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095

(603) 271-2147 FAX (603) 271-6588



Timothy Ruff and Carol Sobetzer
Rural Route 1, Box 207B
Orford, NH 03777

ADMINISTRATIVE ORDER
No. WD 05-025

Re: Wetlands File #2004-2441
Route 25-A, Orford, NH

July 29, 2005

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division to Timothy Ruff and Carol Sobetzer pursuant to RSA 482-A:6. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH.
2. Timothy Ruff and Carol Sobetzer are individuals having a mailing address of Rural Route 1, Box 207B, Orford, NH 03777.

C. STATEMENTS OF FACTS AND LAW

1. Pursuant to RSA 482-A, the Department of Environmental Services regulates dredging, filling, and construction in or on any bank, flat, marsh, wetland or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I, the Commissioner of DES has adopted Wt 100 *et seq.* to implement this program.
2. RSA 482-A:3, I states that "no person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without permit from [DES]."
3. Timothy Ruff and Carol Sobetzer are the owners of land located on Route 25-A, more particularly described on Town of Orford Tax Map 7 as Lot 32 1A ("the Property").
4. On October 5, 2004, DES received a complaint alleging that a stream had been re-routed on the Property.
5. On October 6, 2004, DES personnel conducted a field inspection of the Property and observed the following:

- a. A stream channel measuring approximately 85 linear feet had been excavated for the purpose of re-routing an intermittent stream. The former intermittent stream thread carried runoff from a drainage ditch and stream channel from Route 25 A;
 - b. A driveway had been constructed on the Property, leading to an excavated building site. Concrete foundation forms were in place where the former stream channel thread was located;
 - c. Approximately 120 linear feet of drainage swale had been constructed to carry flow from the newly-constructed stream channel. The drainage swale did not connect hydrologically to a forested wetland located down gradient of the building site.
6. On March 28, 2005, DES issued Letter of Deficiency WET 2005-003 ("LoD") to Timothy Ruff and Carol Sobetzer. The LoD requested:
 - a. By April 15, 2005, retain a certified wetland scientist to prepare a restoration plan to restore the former stream channel and to stabilize the drainage swale and new stream channel; and
 - b. By June 15, 2005, submit the restoration plan to DES for review and approval.
7. The LoD was received on April 6, 2005, as evidenced by the signed postal receipt.
8. On April 8, 2005, Mr. Ruff telephoned DES to deny the existence of an intermittent stream on the Property, stating that the water was from sheet flow. Mr. Ruff also stated that the area had become more stabilized than DES had observed in the October 2004 field inspection.
9. On June 6, 2005, DES conducted a second field inspection and observed the following:
 - a. The drainage swale and new thread to the stream channel was exposed and was eroding; and
 - b. An additional drainage ditch had been dug to carry water from a second intermittent stream away from the building site. This second intermittent stream was hydrologically connected to the forested wetland located on the other side of the house foundation.
10. DES records indicate that the restoration plan has not been received as requested in the LoD.
11. A review of DES records show that no permit was issued under RSA 482-A:3 for work observed on the Property.

D. DETERMINATION OF VIOLATIONS

1. Timothy Ruff and Carol Sobetzer have violated RSA 482-A:3, I by re-routing approximately 85 linear feet of intermittent stream channel without a permit from DES.

E. ORDER

Based on the above findings, DES hereby orders Thomas and Christine Fraser as follows:

1. By August 15, 2005, retain a qualified environmental consultant to prepare a restoration plan to restore the intermittent stream for DES review and approval.
2. The restoration plan shall include the following:
 - a. A plan with dimensions, drawn to scale, showing:
 - i. Existing conditions; and
 - ii. Proposed conditions once restoration is completed;
 - b. A detailed description of the proposed means of erosion and sediment controls and stabilization of the restoration area; and
 - c. A description of the proposed restoration sequence and methods for accomplishing the restoration, and time frame for completion.
3. By September 15, 2005, submit the restoration plan to DES.
4. By October 15, 2005, implement the restoration plan only after receiving written approval and as conditioned by DES.
5. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Linda Magoon
DES Water Division
P.O. Box 95
Concord, NH 03302-0095
Fax: (603) 271-6588

F. APPEAL


Any person aggrieved by this Order may request that DES reconsider the Order within 20 days of the date of the Order. The request for reconsideration must comply with Wt 203.01(d) (copy attached), and will be processed in accordance with Wt 203.01(e) – (j). Any party not satisfied with the decision on reconsideration may appeal to the Wetlands Council. Please note that under RSA 482-A:10, II, the Council may not consider any ground that is not set forth in the request for reconsideration.

Filing an appeal or motion for reconsideration of the Order does not automatically relieve Timothy Ruff and Carol Sobetzer the obligation to comply with the Order.


G. OTHER PROVISIONS

Please note that RSA 482-A provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. DES will continue to monitor compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Grafton County Registry of Deeds so as to run with the land.



COPY
Harry T. Stewart, P.E., Director
Water Division



COPY
Michael P. Nolin, Commissioner
Department of Environmental Services

Certified Mail/RRR: 7004 0750 0001 2419 2943

cc: Gretchen R. Hamel, Legal Unit Administrator ✓
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB
Public Information Officer, DES PIP Office
Orford Board of Selectmen
Orford Conservation Commission
Grafton County Registry of Deeds